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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,546	04/25/2000	ELLIOTT BENNETT-GUERRERO	08213/007001	6875

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FISH & RICHARDSON
225 FRANKLIN STREET
BOSTON, MA 02110-2804

EXAMINER

SWARTZ, RODNEY P

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 06/18/2002

18

Please find below and/or attached a Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/423,546

Applicant(s)

BENNETT-GUERRERO ET AL.

Examiner

Rodney P. Swartz, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28March2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44,55-59,61-64,66-68,73-76,78-88,93 and 97-100 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44, 55-59, 61-64, 66-68, 73-76, 78-88, 93, 93, 97-100 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. Applicants' Response to Office Action, received 28March2002, paper#17, is acknowledged.

Claims 47-49, 52-54, 69, 72, 89-92, 95, 96, and 101-111 have been canceled. Claims 44, 58, 64, 66, and 78-83 have been amended.

2. Currently, claims 44, 55-59, 61-64, 66-68, 73-76, 78-88, 93, 94, and 97-100 are pending and under consideration.

Rejections Moot/Withdrawn

3. The rejection of claims 47-49, 52-54, 69, 72, 89-92, 95, and 96 under 35 U.S.C. 112, first paragraph, scope of enablement for treatment of animals, is moot in light of the cancelation of the claims.
4. The rejection of claim 111 under 35 U.S.C. 112, second paragraph, as being indefinite, is moot in light of the cancelation of the claim.
5. The rejection of claims 101-111 under 35 U.S.C. 112, first paragraph, scope of enablement, is moot in light of the cancelation of the claims.
6. The rejection of claim 64 under 35 U.S.C. 112, second paragraph, as being indefinite for "the other of said bacterial strains", is withdrawn in light of the claim amendment.

Rejections Maintained

7. The rejection of claims 97 and 98 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, is maintained.

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No arguments have been put forth by applicants.

8. The rejection of claims 44, 55-59, 61-64, 66-68, 73-76, 78-88, 93, 94, 99, and 100 under 35 U.S.C. 112, first paragraph, scope of enablement for treatment of animals, is maintained.

Applicants argue that the amendment of the claims deleting *Salmonella* and *Klebsiella* obviates the rejection.

The examiner has considered applicants' argument, but does not find it persuasive. The specification of the international publication for this U.S. national phase application (WO98/09988) on which applicants' base their support for the broad scope of the instant claims to include all strains of *E. coli*, *Pseudomonas*, and *Bacteroides*, utilizes only either a liposomal composition consisting only of purified *E. coli* specific strain K-12 LPS or a cocktail of purified LPS from only *E. coli* K-12, *E. coli* R1, *P. aeruginosa* PAC608, and *B. fragilis* LPS. There is insufficient support for the instant claims, i.e., treatment of animals utilizing a composition comprising rough complete-core LPS antigens from ≥ 2 bacteria of all strains of *E. coli*, *Pseudomonas*, and *Bacteroides*.

Conclusion

9. Claims 44, 55-59, 61-64, 66-68, 73-76, 78-88, 93, 94, and 97-100 are finally rejected.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (703) 308-4244. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (703)308-3909. The facsimile telephone number for the Art Unit Group is (703)308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)308-0196.


RODNEY P. SWARTZ, PH.D.
PRIMARY EXAMINER
Art Unit 1645

June 17, 2002